

Elhalwani v. Hani Naim Saeed Sharaf, SACV 14-1522 JVS (DFMx)

Related Case: Hani Naim Saeed Sharaf v. Starbuzz Tobacco, Inc., SACV 14-0541 JVS (DFMx)

TENTATIVE ORDER Granting Motion to Consolidate and Denying as Moot Motion to Stay

Plaintiff Salim Elhalwani (“Elhalwani”) moves the Court to consolidate this case with another action before the Court, Hani Naim Saeed Sharaf v. Starbuzz Tobacco, Inc., SACV 14-0541 JVS (DFMx) (hereinafter, “Starbuzz”). (Docket No. 17.) Defendant Hani Naim Saeed Sharaf (“Sharaf”) opposes (Docket No. 24) and Elhalwani has replied. (Docket No. 26.) Starbuzz Tobacco, Inc. (“Starbuzz”), a nonparty to this action and the defendant in Starbuzz, joins in Elhalwani’s motion to consolidate. (Docket No. 23.)

Also before the Court is Sharaf’s motion to stay this case pending the resolution of Starbuzz. (Docket No. 21.) Elhalwani opposes. (Docket No. 25.)

As set forth below, the Court GRANTS Elhalwani’s motion to consolidate and DENIES AS MOOT Sharaf’s motion to stay.

I. BACKGROUND

Elhalwani claims to be the 100% shareholder of Starbuzz, which manufactures, imports, distributes, and sells tobacco and tobacco-related products in the United States. (Compl. ¶¶ 8-11.) Sharaf disputes Elhalwani’s sole ownership and alleges that Starbuzz failed to perform under a written agreement that obligated Starbuzz to grant Sharaf a 24.5% ownership interest in Starbuzz in exchange for Sharaf’s assistance in the manufacture of certain tobacco products. (Id. ¶ 13.)

In April 2014, Sharaf filed the Starbuzz action, asserting claims against Starbuzz for breach of contract and fraud. (Id. ¶ 12.) Based on the same underlying dispute, Elhalwani, a nonparty to the Starbuzz action, brought this action against Sharaf seeking declaratory judgment that he is the sole shareholder of Starbuzz, that the agreement in question is no longer in effect, that Sharaf worked for Starbuzz as an independent contractor, and that Sharaf is not entitled to

any interest in Starbuzz. (Id. ¶ 20.)

II. LEGAL STANDARD

Rule 42(a) of the Federal Rules of Civil Procedure provides that “[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). Rule 42(a) encourages entertaining the broadest possible scope of action consistent with fairness to the parties and the consolidation of claims, parties and remedies is strongly encouraged. See United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 724 (1966) (“Under the [Federal] Rules [of Civil Procedure], the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.”) (citing, *inter alia*, Fed. R. Civ. P. 42). The Court “has broad discretion under this rule to consolidate cases.” Investors Research Co. v. United States Dist. Court, 877 F.2d 777, 777 (9th Cir. 1989). In exercising its discretion to consolidate, the Court “must balance the savings of time and effort consolidation will produce against any inconvenience, delay, confusion, or prejudice that may result.” Takeda v. Turbodyne Techs., Inc., 67 F. Supp. 2d 1129, 1133 (C.D. Cal. 1999) (citing Burrus v. Turnbo, 743 F.2d 693, 394 (9th Cir. 1984), vacated on other grounds sub nom., Hajar v. Burrus, 474 U.S. 1016 (1985)).

III. DISCUSSION

Elhalwani now seeks to consolidate this case and Starbuzz because they involve common questions of law and fact. (See Mot. Consolidate 4-5.) Sharaf does not dispute that the issues presented in both cases are similar, if not identical. (See Opp’n Mot. Consolidate 3-4.) The Court agrees with Elhalwani that consolidating the actions would result in substantial savings of time and resources. Many of the proposed witnesses would provide testimony relevant to both cases, and several of those witnesses are residents of foreign nations. (See Mot. Consolidate 5-7.) Elhalwani notes that many witnesses, including Elhalwani, have not yet had their deposition taken in either action. (Id.)

Sharaf opposes consolidation on the grounds that he will be prejudiced by the addition of Elhalwani into the Starbuzz action at this stage in the discovery process. (Opp’n Mot. Consolidate at 4-5.) Starbuzz is currently set for trial on

October 6, 2015, but Elhalwani has proposed an extension of the discovery deadline until November if the actions are consolidated. (Id. at 5.)

However, Elhalwani notes that Starbuzz is in the early stages of discovery and only two witnesses have had their depositions taken. (Mot. Consolidate 8.) Elhalwani also argues that any potential prejudice can be remedied with a mutually agreeable discovery and trial schedule. (Reply Supp. Mot. Consolidate 5.)

On balance, the Court concludes that any potential prejudice the parties will suffer as a result of continuing the discovery deadline and trial date is outweighed by the substantial efficiency of resolving these nearly identical issues in one case. Accordingly, the Court grants Elhalwani's motion to consolidate.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Elhalwani's motion to consolidate this case with Starbuzz. The Clerk is directed to close Elhalwani v. Hani Naim Saeed Sharaf, SACV 14-1522 JVS (DFMx). All future filings shall be made in Hani Naim Saeed Sharaf v. Starbuzz Tobacco, Inc., SACV 14-0541 JVS (DFMx).

Because the Court will consolidate this case with Starbuzz, the Court need not consider a stay of this action and accordingly DENIES AS MOOT Sharaf's motion to stay.

The parties should be prepared to discuss what adjustments, if any, should be made to the current trial schedule.

IT IS SO ORDERED.